IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.3482 of 2006

Date of Decision: 1.12.2006

Kalawati & Anr. ...Petitioners

Vs.

State of Haryana & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.I.D.Singla, Advocate,
for the petitioner.

Mr. S.S.Kharb, AAG, Haryana,
for respondents No.1 and 2.

Mr.K.S.Dhaliwal, Advocate,
for respondents No.3 and 4.

Vinod K.Sharma, J. (Oral)

This revision petition has been filed against an order passed by the learned Additional Civil Judge (Senior Division), Narwana vide which application moved by the petitioners herein for the release of half amount of the retiral benefits due to the petitioners has been declined.

The plaintiff-respondents had filed a suit for injunction against respondents No.1 and 2 restraining them from releasing 50 per cent retiral benefits of late Zile Singh in favour of respondents No.3 and 4 i.e. the widow and minor daughter. The plaintiffs also moved an application under

Order 39 Rules 1 and 2 of the Code of Civil Procedure seeking temporary injunction against the release of the amount.

The learned Trial Court disposed of the application by observing as under:

> " Adjudging all these facts and circumstances of the case in hand wherein a prima facie case is made out in favour of the plaintiffs, question of irreparable loss and injury and balance of convenience is also tilts in favour of plaintiffs. Plaintiffs are entitled to relief of interim injunction as sought for in this application. Resultantly application in hand is hereby allowed restraining restraining the defendant set No.1 from disbursing the entire service benefits i.e. gratuity, GPF, medical, leave encashment insurance etc. and other emoluments payable as regards deceased Zile Singh to defendant set No.2 only. It is made clear that defendant set No.1 can be disbursed the amount aforesaid in favour of defendant set no.2 to the extent of half share only as at this stage plaintiffs are found to be entitled to disbursement of half share out of these emoluments.
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> 12. Nothing herein shall be misconstrued as a reflection on the merits of the case."

This order was challenged by the petitioners herein before the learned Additional District Judge, Jind. In the said appeal directions were issued to release the payment to the extent of 50 per cent of the amount due to the plaintiff-respondents against furnishing of adequate security. A revision against the said order was also dismissed.

An application was moved by the petitioners herein for

directions to release 50 per cent of the balance amount to the petitioners. Said application has been declined by observing that there was no order of any court to release 50 per cent of the payment to the petitioners herein. This finding is totally contrary to record as the learned Trial Court has held that the petitioners were entitled to 50 per cent of the amount.

Accordingly, this revision is allowed. The impugned order is set aside. Respondents No.1 and 2 are directed to release 50 per cent of the amount to the petitioners, especially when in suit the plaintiff's claim was only qua 50 per cent of retiral benefits and there was no dispute regarding the remaining 50 percent, payable to the petitioner.

Disposed off.

(Vinod K.Sharma)
Judge

1.12.2006
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